

HEALTH AND SAFETY CODE
TITLE 4. HEALTH FACILITIES
SUBTITLE B. LICENSING OF HEALTH FACILITIES
CHAPTER 247. ASSISTED LIVING FACILITIES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 247.001. SHORT TITLE. This chapter may be cited as the Assisted Living Facility Licensing Act.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 114, eff. Sept. 1, 1991; Acts 1991, 72nd Leg., ch. 637, art. 2, Sec. 1, eff. Sept. 1, 1991. Amended by Acts 1999, 76th Leg., ch. 233, Sec. 1, eff. Sept. 1, 1999.

Sec. 247.0011. SCOPE, PURPOSE, AND IMPLEMENTATION. (a) The purpose of this chapter is to ensure that assisted living facilities in this state deliver the highest possible quality of care. This chapter and the rules adopted under this chapter establish minimum acceptable levels of care, and a violation of a minimum acceptable level of care established under this chapter is a violation of law. For purposes of this chapter, components of quality of care include:

- (1) resident independence and self-determination;
- (2) humane treatment;
- (3) conservative intervention;
- (4) access to care;
- (5) continuity of care;
- (6) coordination of services;
- (7) safe surroundings;
- (8) professionalism of service providers;
- (9) participation in useful studies; and
- (10) quality of life.

(b) The executive commissioner shall protect residents of assisted living facilities by:

- (1) adopting rules relating to quality of care and quality of life; and
- (2) adopting rules relating to the assessment of the

condition and service needs of each resident.

(b-1) The department shall protect residents of assisted living facilities by:

(1) promoting policies that maximize the dignity, autonomy, privacy, and independence of each resident;

(2) regulating the construction, maintenance, and operation of assisted living facilities;

(3) strictly monitoring factors relating to the health, safety, welfare, and dignity of each resident;

(4) imposing prompt and effective remedies for violations of this chapter and rules and standards adopted under this chapter;

(5) promoting a residential environment that allows residents to maintain the highest possible degree of independence and self-determination; and

(6) providing the public with helpful and understandable information relating to the operation of assisted living facilities in this state.

(c) Assisted living services are driven by a service philosophy that emphasizes personal dignity, autonomy, independence, and privacy. Assisted living services should enhance a person's ability to age in place in a residential setting while receiving increasing or decreasing levels of service as the person's needs change.

Added by Acts 1999, 76th Leg., ch. 233, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. [219](#)), Sec. 3.0695, eff. April 2, 2015.

Sec. 247.002. DEFINITIONS. In this chapter:

(1) "Assisted living facility" means an establishment that:

(A) furnishes, in one or more facilities, food and shelter to four or more persons who are unrelated to the proprietor of the establishment;

(B) provides:

(i) personal care services; or

(ii) administration of medication by a person licensed or otherwise authorized in this state to administer the medication;

(C) may provide assistance with or supervision of the administration of medication;

(D) may provide skilled nursing services for the following limited purposes:

(i) coordination of resident care with outside home and community support services agencies and other health care professionals;

(ii) provision or delegation of personal care services and medication administration as described by this subdivision;

(iii) assessment of residents to determine the care required; and

(iv) for periods of time as established by department rule, delivery of temporary skilled nursing treatment for a minor illness, injury, or emergency; and

(E) may provide health maintenance activities as defined by rule by the Texas Board of Nursing.

(2) "Commission" means the Health and Human Services Commission.

(2-a) "Commissioner" means the commissioner of aging and disability services.

(3) "Controlling person" means a person who controls an assisted living facility or other person as described by Section [247.005](#).

(4) "Department" means the Department of Aging and Disability Services.

(4-a) "Executive commissioner" means the executive commissioner of the Health and Human Services Commission.

(5) "Personal care services" means:

(A) assistance with feeding, dressing, moving, bathing, or other personal needs or maintenance; or

(B) general supervision or oversight of the physical and mental well-being of a person who needs assistance to maintain a private and independent residence in an assisted living

facility or who needs assistance to manage the person's personal life, regardless of whether a guardian has been appointed for the person.

(6) "Qualified religious society" means a church, synagogue, or other organization or association that is organized primarily for religious purposes and that:

(A) has been in existence in this state for at least 35 years; and

(B) does not distribute any of its income to its members, officers, or governing body other than as reasonable compensation for services or reimbursement of expenses.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 114, eff. Sept. 1, 1991.

Amended by Acts 1991, 72nd Leg., ch. 637, art. 2, Sec. 1, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 608, Sec. 2, eff. Aug. 30, 1993; Acts 1995, 74th Leg., ch. 76, Sec. 8.092, eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 233, Sec. 1, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 1248, Sec. 1, eff. Sept. 1, 2001.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1106 (H.B. [216](#)), Sec. 2, eff. September 1, 2009.

Acts 2011, 82nd Leg., 1st C.S., Ch. 7 (S.B. [7](#)), Sec. 1.08(a), eff. September 28, 2011.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. [219](#)), Sec. 3.0696, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. [219](#)), Sec. 3.0697, eff. April 2, 2015.

Acts 2019, 86th Leg., R.S., Ch. 298 (H.B. [3329](#)), Sec. 1, eff. September 1, 2019.

Sec. 247.003. APPLICATION OF OTHER LAW. (a) Except as provided by Subsections (b) and (c), Chapter [242](#) does not apply to an assisted living facility licensed under this chapter.

(b) Subchapter D, Chapter [242](#), applies to an assisted living facility, and the department shall administer and enforce that subchapter for an assisted living facility in the same manner it is administered and enforced for a nursing home.

(c) Except as provided by this subsection, Subchapter R,

Chapter 242, applies to an assisted living facility, and the department shall administer that subchapter for an assisted living facility in the same manner it is administered and enforced for a nursing home, but shall enforce that subchapter in accordance with the sanctions authorized by this chapter. Sections 242.851 and 242.852 do not apply to an assisted living facility or to conduct within an assisted living facility.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 114, eff. Sept. 1, 1991; Acts 1991, 72nd Leg., ch. 637, art. 2, Sec. 1, eff. Sept. 1, 1991. Amended by Acts 1999, 76th Leg., ch. 233, Sec. 1, eff. Sept. 1, 1999; Acts 2003, 78th Leg., ch. 160, Sec. 1, eff. May 27, 2003.

Sec. 247.004. EXEMPTIONS. This chapter does not apply to:

(1) a boarding home facility as defined by Section 260.001;

(2) an establishment conducted by or for the adherents of the Church of Christ, Scientist, for the purpose of providing facilities for the care or treatment of the sick who depend exclusively on prayer or spiritual means for healing without the use of any drug or material remedy if the establishment complies with local safety, sanitary, and quarantine ordinances and regulations;

(3) a facility conducted by or for the adherents of a qualified religious society classified as a tax-exempt organization under an Internal Revenue Service group exemption ruling for the purpose of providing personal care services without charge solely for the society's professed members or ministers in retirement, if the facility complies with local safety, sanitation, and quarantine ordinances and regulations; or

(4) a facility that provides personal care services only to persons enrolled in a program that:

(A) is funded in whole or in part by the department and that is monitored by the department or its designated local intellectual and developmental disability authority in accordance with department rules; or

(B) is funded in whole or in part by the Department of State Health Services and that is monitored by that

department, or by its designated local mental health authority in accordance with department rules.

Added by Acts 1991, 72nd Leg., ch. 637, art. 2, Sec. 1, eff. Sept. 1, 1991. Amended by Acts 1993, 73rd Leg., ch. 608, Sec. 1, eff. Aug. 30, 1993; Acts 1999, 76th Leg., ch. 233, Sec. 1, eff. Sept. 1, 1999. Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1106 (H.B. 216), Sec. 3, eff. September 1, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 91 (S.B. 1303), Sec. 27.002(5), eff. September 1, 2011.

Acts 2011, 82nd Leg., 1st C.S., Ch. 7 (S.B. 7), Sec. 1.08(b), eff. September 28, 2011.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0698, eff. April 2, 2015.

Sec. 247.005. CONTROLLING PERSON. (a) A person is a controlling person if the person, acting alone or with others, has the ability to directly or indirectly influence, direct, or cause the direction of the management, expenditure of money, or policies of an assisted living facility or other person.

(b) For purposes of this chapter, "controlling person" includes:

(1) a management company, landlord, or other business entity that operates or contracts with others for the operation of an assisted living facility;

(2) a person who is a controlling person of a management company or other business entity that operates an assisted living facility or that contracts with another person for the operation of an assisted living facility; and

(3) any other individual who, because of a personal, familial, or other relationship with the owner, manager, landlord, tenant, or provider of an assisted living facility, is in a position of actual control or authority with respect to the facility, without regard to whether the individual is formally named as an owner, manager, director, officer, provider, consultant, contractor, or employee of the facility.

(b-1) Notwithstanding any other provision of this section,

for purposes of this chapter, a controlling person of an assisted living facility or of a management company or other business entity described by Subsection (b)(1) that is a publicly traded corporation or is controlled by a publicly traded corporation means an officer or director of the corporation. The term does not include a shareholder or lender of the publicly traded corporation.

(c) A controlling person described by Subsection (b)(3) does not include an employee, lender, secured creditor, landlord, or other person who does not exercise formal or actual influence or control over the operation of an assisted living facility.

(d) The executive commissioner may adopt rules that specify the ownership interests and other relationships that qualify a person as a controlling person.

Added by Acts 1999, 76th Leg., ch. 233, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 917 (H.B. 2972), Sec. 3, eff. September 1, 2009.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0699, eff. April 2, 2015.

Sec. 247.007. COMPLIANCE WITH CHAPTER 260A. (a) An assisted living facility shall comply with Chapter 260A and the rules adopted under that chapter.

(b) A person, including an owner or employee of an assisted living facility, shall comply with Chapter 260A and the rules adopted under that chapter.

Added by Acts 2011, 82nd Leg., 1st C.S., Ch. 7 (S.B. 7), Sec. 1.05(i), eff. September 28, 2011.

SUBCHAPTER B. LICENSING, FEES, AND INSPECTIONS

Sec. 247.021. LICENSE REQUIRED. (a) A person may not establish or operate an assisted living facility without a license issued under this chapter.

(b) A person establishing or operating a facility that is not required to be licensed under this chapter may not use the term "assisted living" in referring to the facility or the services

provided at the facility.

(c) A person establishing or operating a facility that is not required to be licensed but who elects to obtain a license under this chapter may use the term "assisted living" in referring to the facility or the services provided at the facility.

(d) The executive commissioner by rule shall establish procedures to issue a six-month provisional license to existing facilities with residents. The department may issue a provisional license if:

(1) the facility is in compliance with resident care standards;

(2) the facility voluntarily discloses that the facility needs additional time to comply with life safety code and physical plant standards;

(3) the disclosure is made in writing by certified mail to the department;

(4) an investigation of the violation was not initiated and the violation was not independently detected by the department; and

(5) the disclosure is made promptly after knowledge of the information disclosed is obtained by the facility.

(d-1) A provisional license expires the earlier of:

(1) the 180th day after the effective date of the provisional license or the end of any extension period granted by the department, in the department's sole discretion; or

(2) the date a license is issued to the provisional license holder under Subsection (d-3).

(d-2) The department shall conduct a life safety code inspection of the facility as soon as reasonably possible after the department issues a provisional license.

(d-3) After conducting a life safety code inspection, the department shall issue a license under Section [247.023](#) to the provisional license holder if the facility passes the inspection and the applicant meets all requirements for a license. A license issued under this subsection has the same effective date as the provisional license.

(e) Repealed by Acts 2009, 81st Leg., R.S., Ch. 917, Sec. 9,

eff. September 1, 2009.

(f) Repealed by Acts 2009, 81st Leg., R.S., Ch. 917, Sec. 9, eff. September 1, 2009.

(g) The department shall, upon submission of a written request by the applicant, automatically issue a six-month provisional license without conducting a life safety code inspection before issuance of the provisional license to a newly constructed facility if:

(1) the license applicant has submitted building plans to the department for an early compliance review in accordance with Section [247.0261](#);

(2) all local approvals, including a certificate of occupancy where required, have been obtained;

(3) a complete license application form is submitted within 30 days of receipt of all local approvals;

(4) the license fee has been paid;

(5) the department determines that the license applicant or a person who owns the license applicant and controls the operations of the license applicant constructed another facility in this state that complies with the department's life safety code standards; and

(6) the facility is in compliance with resident care standards based on an on-site health inspection.

(h) The department may automatically issue a provisional license in the case of a corporate change of ownership of a facility.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 114, eff. Sept. 1, 1991;

Acts 1991, 72nd Leg., ch. 637, art. 2, Sec. 1, eff. Sept. 1, 1991.

Amended by Acts 1997, 75th Leg., ch. 1088, Sec. 1, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 233, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 917 (H.B. [2972](#)), Sec. 4, eff. September 1, 2009.

Acts 2009, 81st Leg., R.S., Ch. 917 (H.B. [2972](#)), Sec. 9, eff. September 1, 2009.

Acts 2013, 83rd Leg., R.S., Ch. 382 (H.B. [3729](#)), Sec. 1, eff. September 1, 2013.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0700, eff. April 2, 2015.

Sec. 247.0211. EXPEDITED INSPECTION. (a) The executive commissioner shall adopt rules to implement an expedited inspection process that allows an applicant for an assisted living facility license or for a renewal of a license to obtain:

(1) a life safety code and physical plant inspection not later than the 15th day after the date the request is made; or

(2) an on-site health inspection not later than the 21st day after the date the request is made.

(b) The department may charge a fee to recover the cost of the expedited inspection.

Added by Acts 2009, 81st Leg., R.S., Ch. 917 (H.B. 2972), Sec. 5, eff. September 1, 2009.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0701, eff. April 2, 2015.

Acts 2019, 86th Leg., R.S., Ch. 362 (H.B. 823), Sec. 1, eff. September 1, 2019.

Acts 2019, 86th Leg., R.S., Ch. 362 (H.B. 823), Sec. 2, eff. September 1, 2019.

Sec. 247.022. LICENSE APPLICATION. (a) An applicant for an assisted living facility license must submit an application to the department on a form prescribed by the department.

(b) Each application must be accompanied by a nonrefundable license fee in an amount set by the executive commissioner by rule.

(b-1) If the department conducts more than two life safety code inspections at the applicant's facility, the department may collect a fee in addition to the fee under Subsection (b) for the application for the license.

(c) The department may provide technical assistance to an applicant by making brief inspections of the assisted living facility proposed to be licensed and making recommendations concerning actions necessary to meet standards for assisted living facilities.

(d) An assisted living facility license applicant in good standing may request an initial license that does not require an on-site health inspection. The department may not require the applicant to admit a resident to the facility before the department issues the license. The department shall require the license applicant to submit for approval policies and procedures, verification of employee background checks, and employee credentials.

(e) The department shall conduct a survey of a facility issued an initial license under Subsection (d) not later than the 90th day after the date on which the department issues the license to the facility. Until the department conducts the survey, the facility shall disclose to all residents and prospective residents that the department has not yet conducted the survey required by this subsection.

(f) For purposes of this section, a license applicant is in "good standing" if:

(1) the license applicant, or the controlling person of the license applicant if the license applicant is a newly formed business entity, has operated or been the controlling person of an assisted living facility in this state for six consecutive years; and

(2) each assisted living facility operated by the license applicant, or operated or controlled by a controlling person of the license applicant if the license applicant is a newly formed business entity:

(A) has not had a violation that resulted in actual harm to a resident or that posed an immediate threat of harm causing, or likely to cause, serious injury, impairment, or death of a resident; and

(B) in the six years preceding the date on which the license applicant submits the application, has not had a sanction imposed by the department against the facility, including:

(i) the imposition of a civil or administrative penalty or an injunction;

(ii) the denial, suspension, or revocation of a license; or

(iii) an emergency closure.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 114, eff. Sept. 1, 1991.

Amended by Acts 1991, 72nd Leg., ch. 637, art. 2, Sec. 1, eff. Sept. 1, 1991; Acts 1999, 76th Leg., ch. 233, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 917 (H.B. [2972](#)), Sec. 6, eff. September 1, 2009.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. [219](#)), Sec. 3.0702, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 100 (H.B. [1769](#)), Sec. 1, eff. September 1, 2015.

Sec. 247.023. ISSUANCE AND RENEWAL OF LICENSE. (a) The commission shall issue a license if, after inspection and investigation, it finds that the applicant, the assisted living facility, and all controlling persons with respect to the applicant or facility meet the requirements of this chapter and the standards adopted under this chapter. The license expires on the third anniversary of the date of its issuance. The executive commissioner by rule shall adopt a system under which licenses expire on staggered dates during each three-year period. The commission shall prorate the license fee as appropriate if the expiration date of a license changes as a result of this subsection.

(b) To renew a license, the license holder must submit to the commission the license renewal fee.

(c) The commission may require participation in a continuing education program as a condition of renewal of a license. The executive commissioner shall adopt rules to implement this subsection.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 114, eff. Sept. 1, 1991.

Amended by Acts 1991, 72nd Leg., ch. 637, art. 2, Sec. 1, eff. Sept. 1, 1991; Acts 1999, 76th Leg., ch. 233, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 809 (S.B. [1318](#)), Sec. 14, eff. September 1, 2007.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. [219](#)), Sec. 3.0703, eff. April 2, 2015.

Acts 2017, 85th Leg., R.S., Ch. 836 (H.B. 2025), Sec. 5, eff. September 1, 2017.

Sec. 247.0231. COMPLIANCE RECORD IN OTHER STATES. The department may require an applicant or license holder to provide the department with information relating to compliance by the applicant, the license holder, or a controlling person with respect to the applicant or license holder with regulatory requirements in another state in which the applicant, license holder, or controlling person operates or operated an assisted living facility.

Added by Acts 1999, 76th Leg., ch. 233, Sec. 1, eff. Sept. 1, 1999.

Sec. 247.024. FEES; DISPOSITION OF REVENUE. (a) The executive commissioner by rule shall set license fees imposed by this chapter:

(1) on the basis of the number of beds in assisted living facilities required to pay the fee; and

(2) in amounts reasonable and necessary to defray the cost of administering this chapter, but not to exceed \$2,250.

(b) The executive commissioner shall establish by rule a base fee schedule and a per bed fee schedule.

(c) All fees or penalties collected under this chapter shall be deposited in the state treasury to the credit of the general revenue fund.

(d) Investigation fees or attorney's fees may not be assessed against or collected from an assisted living facility by or on behalf of the commission or another state agency unless the commission or other state agency assesses and collects a penalty authorized by this chapter from the facility.

(e) An applicant who submits a license renewal later than the 45th day before the expiration date of a current license is subject to a late fee in accordance with commission rules.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 114, eff. Sept. 1, 1991.

Amended by Acts 1991, 72nd Leg., ch. 637, art. 2, Sec. 1, eff. Sept. 1, 1991; Acts 1997, 75th Leg., ch. 416, Sec. 1, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 233, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 809 (S.B. [1318](#)), Sec. 15, eff. September 1, 2007.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. [219](#)), Sec. 3.0704, eff. April 2, 2015.

Acts 2017, 85th Leg., R.S., Ch. 836 (H.B. [2025](#)), Sec. 6, eff. September 1, 2017.

Sec. 247.025. ADOPTION OF RULES. (a) The executive commissioner shall adopt rules necessary to implement this chapter, including requirements for the issuance, renewal, denial, suspension, and revocation of a license to operate an assisted living facility.

(b) The executive commissioner shall adopt rules distinguishing and providing guidelines on the scope of services that an assisted living facility may provide under this chapter.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 114, eff. Sept. 1, 1991;

Acts 1991, 72nd Leg., ch. 637, art. 2, Sec. 1, eff. Sept. 1, 1991.

Amended by Acts 1999, 76th Leg., ch. 233, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. [219](#)), Sec. 3.0705, eff. April 2, 2015.

Acts 2019, 86th Leg., R.S., Ch. 298 (H.B. [3329](#)), Sec. 2, eff. September 1, 2019.

Sec. 247.0255. RESTRAINT AND SECLUSION. A person providing services to a resident of an assisted living facility shall comply with Chapter [322](#) and the rules adopted under that chapter.

Added by Acts 2005, 79th Leg., Ch. 698 (S.B. [325](#)), Sec. 3, eff. September 1, 2005.

Sec. 247.026. STANDARDS. (a) The executive commissioner by rule shall prescribe minimum standards to protect the health and safety of an assisted living facility resident.

(b) The standards must:

(1) clearly differentiate an assisted living facility

from an institution required to be licensed under Chapter [242](#);

(2) ensure quality care and protection of the residents' health and safety without excessive cost;

(3) ensure that the daily nutritional and special dietary needs of each resident are met; and

(4) require an assisted living facility to:

(A) use its license number or a state-issued facility identification number in all advertisements, solicitations, and promotional materials; and

(B) provide each prospective resident or prospective resident's representative, as appropriate, with a consumer disclosure statement in a standard form adopted by the department.

(c) The executive commissioner shall require an assisted living facility that provides brain injury rehabilitation services to include in the facility's consumer disclosure statement a specific statement that licensure as an assisted living facility does not indicate state review, approval, or endorsement of the facility's rehabilitation services.

(c-1) The executive commissioner shall require each assisted living facility to include in the facility's consumer disclosure statement whether the facility holds a license classified under Section [247.029](#) for the provision of personal care services to residents with Alzheimer's disease or related disorders.

(d) The executive commissioner may prescribe different levels of minimum standards for assisted living facilities according to the number of residents, the type of residents, the level of personal care provided, the nutritional needs of residents, and other distinctions the executive commissioner considers relevant. If the executive commissioner does not prescribe minimum standards for facilities serving non-geriatric residents, the executive commissioner must develop procedures for consideration and approval of alternate methods of compliance by such facilities with the department's standards.

(e) Local health and safety standards adopted by the municipality in which an assisted living facility is located do not

apply to the facility unless the standards specifically state that they apply to assisted living facilities.

(f) The executive commissioner by rule shall prescribe minimum standards requiring appropriate training in geriatric care for each individual who provides services to geriatric residents as an employee of an assisted living facility and who holds a license or certificate issued by an agency of this state that authorizes the person to provide the services. The minimum standards may require that each licensed or certified individual complete an appropriate program of continuing education or in-service training, as determined by department rule, on a schedule determined by department rule.

(g) Any individual otherwise qualified, who has been employed by a licensed assisted living facility for at least 90 days, shall be eligible to be certified as a medication aide following completion of the required course of study and successful completion of any required examination.

(h) An individual may not serve as the manager of an assisted living facility that has 17 beds or more unless the individual:

(1) has an associate's degree in nursing, health care management, or a related field from a public or private institution of higher education;

(2) has a bachelor's degree from a public or private institution of higher education; or

(3) has at least one year of experience working in management or in the health care industry.

(i) The executive commissioner by rule shall require each manager of an assisted living facility that has 17 beds or more to complete at least one educational course on the management of assisted living facilities not later than the first anniversary of the date the manager begins employment in that capacity.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 114, eff. Sept. 1, 1991.
Amended by Acts 1991, 72nd Leg., ch. 637, art. 2, Sec. 1, eff. Sept. 1, 1991; Acts 1995, 74th Leg., ch. 542, Sec. 1, eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 583, Sec. 2, eff. Aug. 28, 1995; Acts 1997, 75th Leg., ch. 165, Sec. 31.01(57), eff. Sept. 1, 1997; Acts

1997, 75th Leg., ch. 416, Sec. 2, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 233, Sec. 1, eff. Sept. 1, 1999; Acts 2003, 78th Leg., ch. 734, Sec. 1, eff. Sept. 1, 2003.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. [219](#)), Sec. 3.0706, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1256 (H.B. [2588](#)), Sec. 3, eff. June 20, 2015.

Sec. 247.0261. EARLY COMPLIANCE REVIEW. (a) The executive commissioner by rule shall adopt a procedure under which a person proposing to construct or modify an assisted living facility may submit building plans to the department for review for compliance with the department's architectural requirements before beginning construction or modification. In adopting the procedure, the executive commissioner shall set reasonable deadlines by which the department must complete review of submitted plans.

(b) The department shall, within 30 days, review plans submitted under this section for compliance with the department's architectural requirements and inform the person of the results of the review. If the plans comply with the department's architectural requirements, the department may not subsequently change the architectural requirements applicable to the project unless:

- (1) the change is required by federal law; or
- (2) the person fails to complete the project within a reasonable time.

(c) The department may charge a reasonable fee for conducting a review under this section.

(d) A fee collected under this section shall be deposited in the general revenue fund to the credit of the assisted living account.

(e) The review procedure provided by this section does not include review of building plans for compliance with the Texas Accessibility Standards as administered and enforced by the Texas Department of Licensing and Regulation.

Added by Acts 1999, 76th Leg., ch. 233, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. [219](#)), Sec. 3.0707, eff. April 2, 2015.

Sec. 247.0262. REPORT ON LIFE SAFETY CODE SURVEYS. (a) The department shall annually report the number of life safety code surveys for an initial assisted living facility license with respect to which the department first visits the facility to conduct the survey more than 60 days after the date the applicant notifies the department that the applicant is ready for the initial survey.

(b) The department may report other data related to the timeliness of life safety code surveys or the processing time of license applications.

(c) The department may include the information described by Subsections (a) and (b) in any required annual regulatory report.

Added by Acts 2009, 81st Leg., R.S., Ch. 917 (H.B. [2972](#)), Sec. 7, eff. September 1, 2009.

Sec. 247.0263. LIFE SAFETY CODE TECHNICAL MEMORANDUM.

(a) At least twice each year, the commission shall issue a technical memorandum providing guidance on the interpretation of minimum life safety code standards prescribed under this chapter and by commission rule. Any new requirement that relates to an existing standard must first appear in a technical memorandum.

(b) The commission shall solicit comments from interested parties and experts to assist in determining which standards need to be addressed in a technical memorandum issued under this section.

(c) The commission shall post the technical memorandum on the commission's Internet website.

(d) A technical memorandum issued under this section is binding and must be followed by a person conducting a life safety code survey under this chapter.

(e) This section does not affect the commission's rulemaking process.

Added by Acts 2017, 85th Leg., R.S., Ch. 66 (S.B. [1049](#)), Sec. 1,

eff. September 1, 2017.

Sec. 247.0264. ACCESSIBILITY STANDARDS. (a) The Texas Department of Licensing and Regulation governs the interpretation and enforcement of accessibility standards in assisted living facilities as provided by Chapter 469, Government Code.

(b) An assisted living facility that during initial licensing passed an on-site inspection by the Texas Department of Licensing and Regulation relating to the facility's compliance with the accessibility standards may not be cited by the commission for a violation relating to the accessibility standards. If the commission issues a citation relating to compliance with accessibility standards to a facility that has not been inspected by the Texas Department of Licensing and Regulation for compliance with the accessibility standards, the commission shall rescind the citation on the facility's passage of the on-site inspection by the Texas Department of Licensing and Regulation.

Added by Acts 2017, 85th Leg., R.S., Ch. 66 (S.B. 1049), Sec. 1, eff. September 1, 2017.

Sec. 247.027. INSPECTIONS. (a) In addition to the inspection required under Section 247.023(a), the commission:

(1) shall inspect each assisted living facility at least every two years following the initial inspection required under Section 247.023(a); and

(2) may inspect a facility at other reasonable times as necessary to assure compliance with this chapter.

(b) The commission shall establish an inspection checklist based on the minimum standards that describes the matters subject to inspection. The commission shall use the inspection checklist in conducting inspections under this section and Section 247.023(a).

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 114, eff. Sept. 1, 1991.

Amended by Acts 1991, 72nd Leg., ch. 637, art. 2, Sec. 1, eff. Sept. 1, 1991; Acts 1999, 76th Leg., ch. 233, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2017, 85th Leg., R.S., Ch. 836 (H.B. 2025), Sec. 7, eff.

September 1, 2017.

Sec. 247.0271. INSPECTION EXIT CONFERENCE. (a) At the conclusion of an inspection under Section 247.023(a) or Section 247.027, the inspector shall perform an exit conference to advise the assisted living facility of the findings resulting from the inspection.

(b) At the exit conference, the inspector shall provide a copy of the inspection checklist to the assisted living facility and list each violation discovered during the inspection, with specific reference to the standard violated.

(c) If, after the initial exit conference, additional violations are cited, the inspector shall conduct an additional exit conference regarding the newly identified violations. An additional exit conference must be held in person and may not be held by telephone, e-mail, or facsimile transmission.

(d) The assisted living facility shall submit a plan of correction to the regional director with supervisory authority over the inspector not later than the 10th working day after the date the facility receives the final official statement of violations.

Added by Acts 1999, 76th Leg., ch. 233, Sec. 1, eff. Sept. 1, 1999.
Amended by Acts 2001, 77th Leg., ch. 1248, Sec. 17, eff. Sept. 1, 2001.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 974 (S.B. 344), Sec. 4, eff. September 1, 2007.

Sec. 247.0272. INSPECTOR TRAINING; REQUIRED EXAMINATION.

(a) The department shall develop and implement a training program to provide specialized training to department employees who inspect assisted living facilities under this chapter. The training must emphasize the distinction between an assisted living facility and an institution licensed under Chapter 242.

(b) In developing and updating the training program required by this section, the department shall consult with operators of assisted living facilities and consumers of personal care services provided by assisted living facilities or legal

representatives of those consumers.

(c) The department shall examine department employees who inspect or otherwise survey assisted living facilities under this chapter. In developing the examination, the department shall consult with operators of assisted living facilities or their representatives and with consumers of personal care services provided by assisted living facilities or representatives of consumers.

(d) A department employee may not independently inspect, survey, or take administrative action against an assisted living facility unless the employee has passed the examination administered under Subsection (c).

Added by Acts 1999, 76th Leg., ch. 233, Sec. 1, eff. Sept. 1, 1999.
Amended by Acts 2001, 77th Leg., ch. 1248, Sec. 3, 4, eff. Sept. 1, 2001.

For expiration of this section, see Subsection (c).

Sec. 247.0273. LIFE SAFETY CODE. (a) The executive commissioner by rule shall specify an edition of the Life Safety Code of the National Fire Protection Association to be used in establishing the life safety requirements for an assisted living facility licensed under this chapter.

(b) The rules adopted under Subsection (a) must specify an edition of the Life Safety Code of the National Fire Protection Association issued on or after August 1, 2011.

(c) This section expires September 1, 2021.

Added by Acts 2017, 85th Leg., R.S., Ch. 66 (S.B. [1049](#)), Sec. 2, eff. September 1, 2017.

Sec. 247.0275. REGISTRATION WITH TEXAS INFORMATION AND REFERRAL NETWORK. (a) An assisted living facility licensed under this chapter shall register with the Texas Information and Referral Network under Section [531.0312](#), Government Code, to assist the state in identifying persons needing assistance if an area is evacuated because of a disaster or other emergency.

(b) The assisted living facility is not required to identify individual residents who may require assistance in an evacuation or

to register individual residents with the Texas Information and Referral Network for evacuation assistance.

(c) The assisted living facility shall notify each resident and the resident's next of kin or guardian regarding how to register for evacuation assistance with the Texas Information and Referral Network.

Added by Acts 2009, 81st Leg., R.S., Ch. 1280 (H.B. [1831](#)), Sec. 1.18, eff. September 1, 2009.

Sec. 247.028. ASSISTANCE BY DEPARTMENT. The department may provide assistance to an assisted living facility, including the provision of training materials, the coordination of training conferences and workshops with other state agencies, and the development of a provider's handbook explaining assisted living facility rules.

Added by Acts 1991, 72nd Leg., ch. 637, art. 2, Sec. 1, eff. Sept. 1, 1991. Amended by Acts 1999, 76th Leg., ch. 233, Sec. 1, eff. Sept. 1, 1999.

Sec. 247.029. FACILITIES FOR PERSONS WITH ALZHEIMER'S DISEASE. (a) The executive commissioner by rule shall establish a classification and license for a facility that advertises, markets, or otherwise promotes that the facility provides personal care services to residents who have Alzheimer's disease or related disorders. A facility is not required to be classified under this section to provide care or treatment to residents who have Alzheimer's disease or related disorders.

(b) The executive commissioner shall adopt minimum standards for an assisted living facility classified under this section.

(c) An individual may not serve as the manager of an assisted living facility classified under this section or as the supervisor of an assisted living facility unit classified under this section unless the individual is at least 21 years of age and has:

(1) an associate's degree from a public or private institution of higher education in nursing, health care management,

or a related field;

(2) a bachelor's degree from a public or private institution of higher education in psychology, gerontology, nursing, or a related field; or

(3) at least one year of experience working with persons with dementia.

(d) The executive commissioner by rule shall adopt a definition of "Alzheimer's disease and related disorders," and may adopt by reference a definition published in a generally accepted clinical resource for medical professionals. The executive commissioner shall modify the definition as necessary to conform to changes in medical practice.

Added by Acts 1997, 75th Leg., ch. 444, Sec. 1, eff. Sept. 1, 1997.

Amended by Acts 1999, 76th Leg., ch. 233, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. [219](#)), Sec. 3.0708, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1256 (H.B. [2588](#)), Sec. 4, eff. June 20, 2015.

Sec. 247.031. MUNICIPAL ENFORCEMENT. The governing body of a municipality by ordinance may:

(1) prohibit a person who does not hold a license issued under this chapter from establishing or operating an assisted living facility within the municipality; and

(2) establish a procedure for emergency closure of a facility in circumstances in which:

(A) the facility is established or operating in violation of Section [247.021](#); and

(B) the continued operation of the facility creates an immediate threat to the health and safety of a resident of the facility.

Added by Acts 1997, 75th Leg., ch. 1088, Sec. 2, eff. Sept. 1, 1997.

Renumbered from Sec. 247.029 and amended by Acts 1999, 76th Leg., ch. 233, Sec. 1, eff. Sept. 1, 1999.

Sec. 247.032. ACCREDITATION SURVEY TO SATISFY INSPECTION REQUIREMENTS. (a) In this section, "accreditation commission" means the Commission on Accreditation of Rehabilitation Facilities (CARF), The Joint Commission, or another organization approved by the executive commissioner.

(b) The department shall accept an accreditation survey from an accreditation commission for an assisted living facility instead of an inspection under Section 247.023 or an annual inspection or survey conducted under the authority of Section 247.027, but only if:

(1) the accreditation commission's standards meet or exceed the requirements for licensing of the executive commissioner for an assisted living facility;

(2) the accreditation commission maintains an inspection or survey program that, for each assisted living facility, meets the department's applicable minimum standards as confirmed by the executive commissioner;

(3) the accreditation commission conducts an on-site inspection or survey of the facility at least as often as required by Section 247.023 or 247.027 and in accordance with the department's minimum standards;

(4) the assisted living facility submits to the department a copy of its required accreditation reports to the accreditation commission in addition to the application, the fee, and any report required for renewal of a license;

(5) the inspection or survey results are available for public inspection to the same extent that the results of an investigation or survey conducted under Section 247.023 or 247.027 are available for public inspection; and

(6) the department ensures that the accreditation commission has taken reasonable precautions to protect the confidentiality of personally identifiable information concerning the residents of the assisted living facility.

(c) The department shall coordinate its licensing activities with each of the accreditation commissions.

(d) Except as specifically provided by this section, this section does not limit the department in performing any power or

duty under this chapter or inspection authorized by Section [247.027](#), including taking appropriate action relating to an assisted living facility, such as suspending or revoking a license, investigating an allegation of abuse, exploitation, or neglect or another complaint, assessing an administrative penalty, or closing the facility.

(e) This section does not require an assisted living facility to obtain accreditation from an accreditation commission. Added by Acts 2005, 79th Leg., Ch. 579 (H.B. [1558](#)), Sec. 1, eff. January 1, 2006.

Added by Acts 2005, 79th Leg., Ch. 870 (S.B. [1055](#)), Sec. 1, eff. September 1, 2005.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 917 (H.B. [2972](#)), Sec. 8, eff. September 1, 2009.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. [219](#)), Sec. 3.0709, eff. April 2, 2015.

SUBCHAPTER C. GENERAL ENFORCEMENT

Sec. 247.041. DENIAL, SUSPENSION, OR REVOCATION OF LICENSE.

(a) The department, after providing notice and opportunity for a hearing to the applicant or license holder, may deny, suspend, or revoke a license if the department finds that the applicant, license holder, or a controlling person has:

(1) violated this chapter or a rule, standard, or order adopted or license issued under this chapter in either a repeated or substantial manner; or

(2) committed any act described by Sections [247.0451](#)(a)(2)-(6).

(b) The denial, suspension, or revocation of a license by the department and the appeal from that action are governed by the procedures for a contested case hearing under Chapter [2001](#), Government Code.

(c) The status of a person as an applicant for a license or as a license holder is preserved until final disposition of the contested matter, except as the court having jurisdiction of a

judicial review of the matter may order in the public interest for the welfare and safety of the residents.

(d) A court having jurisdiction of a judicial review of the matter may not order arbitration, whether on motion of any party or on the court's own motion, to resolve a dispute involving the denial, suspension, or revocation of a license under this section or the conduct with respect to which the denial, suspension, or revocation of the license is sought.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 114, eff. Sept. 1, 1991; Acts 1991, 72nd Leg., ch. 637, art. 2, Sec. 1, eff. Sept. 1, 1991. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(49), eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 233, Sec. 1, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 1248, Sec. 5, eff. Sept. 1, 2001.

Sec. 247.042. EMERGENCY SUSPENSION OR CLOSING ORDER. (a) If the department finds an assisted living facility operating in violation of the standards prescribed by this chapter and the violations create an immediate threat to the health and safety of a resident in the facility, the department may suspend the license or order immediate closing of all or part of the facility.

(b) The order suspending a license under Subsection (a) is effective immediately on written notice to the license holder or on the date specified in the order.

(c) The order suspending the license and ordering closure of all or part of an assisted living facility is valid for 10 days after its effective date.

(d) The department shall provide for the relocation of residents of an assisted living facility that is closed. The relocation may not be to a facility with a more restrictive environment unless all other reasonable alternatives are exhausted. Relocation procedures shall be adopted as part of the memorandum of understanding adopted under Section [247.061](#).

(e) The department and the State Office of Administrative Hearings shall expedite any hearing or decision involving an emergency suspension or closing order issued under this section.

Added by Acts 1991, 72nd Leg., ch. 637, art. 2, Sec. 1, eff. Sept. 1, 1991. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 114, eff. Sept.

1, 1991; Acts 1999, 76th Leg., ch. 233, Sec. 1, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 1248, Sec. 6, eff. Sept. 1, 2001.

Sec. 247.043. INVESTIGATION OF ABUSE, EXPLOITATION, OR NEGLECT. (a) The department shall conduct an investigation in accordance with Section 260A.007 after receiving a report of abuse, exploitation, or neglect of a resident of an assisted living facility.

(b) If the thorough investigation reveals that abuse, exploitation, or neglect has occurred, the department shall:

(1) implement enforcement measures, including closing the facility, revoking the facility's license, relocating residents, and making referrals to law enforcement agencies;

(2) notify the Department of Family and Protective Services of the results of the investigation;

(3) notify a health and human services agency, as defined by Section 531.001, Government Code, that contracts with the facility for the delivery of personal care services of the results of the investigation; and

(4) provide to a contracting health and human services agency access to the department's documents or records relating to the investigation.

(c) Providing access to a confidential document or record under Subsection (b)(4) does not constitute a waiver of confidentiality.

Added by Acts 1991, 72nd Leg., ch. 637, art. 2, Sec. 1, eff. Sept. 1, 1991. Amended by Acts 1999, 76th Leg., ch. 233, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2011, 82nd Leg., 1st C.S., Ch. 7 (S.B. 7), Sec. 1.05(j), eff. September 28, 2011.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0711, eff. April 2, 2015.

Sec. 247.044. INJUNCTION. (a) The department may petition a district court for a temporary restraining order to restrain a continuing violation of the standards or licensing requirements

provided under this chapter if the department finds that:

- (1) the violation creates an immediate threat to the health and safety of the assisted living facility residents; or
- (2) the facility is operating without a license.

(b) A district court, on petition of the department and on a finding by the court that a person is violating the standards or licensing requirements provided under this chapter, may by injunction:

- (1) prohibit a person from continuing a violation of the standards or licensing requirements provided under this chapter;
- (2) restrain the establishment or operation of an assisted living facility without a license issued under this chapter; or
- (3) grant any other injunctive relief warranted by the facts.

(c) The department may petition a district court for a temporary restraining order to inspect a facility allegedly required to be licensed and operating without a license when admission to the facility cannot be obtained. If it is shown that admission to the facility cannot be obtained, the court shall order the facility to allow the department admission to the facility.

(d) The attorney general or local prosecuting attorney may institute and conduct a suit authorized by this section at the request of the department.

(e) Venue for a suit brought under this section is in the county in which the assisted living facility is located or in Travis County.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 114, eff. Sept. 1, 1991. Renumbered from 247.043 and amended by Acts 1991, 72nd Leg., ch. 637, art. 2, Sec. 1, eff. Sept. 1, 1991. Amended by Acts 1997, 75th Leg., ch. 416, Sec. 3, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1088, Sec. 3, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 233, Sec. 1, eff. Sept. 1, 1999.

Sec. 247.045. CIVIL PENALTIES. (a) Except as provided by Subsections (b) and (c), a person who violates this chapter or who

fails to comply with a rule adopted under this chapter and whose violation is determined by the department to threaten the health and safety of a resident of an assisted living facility is subject to a civil penalty of not less than \$100 nor more than \$10,000 for each act of violation. Each day of a continuing violation constitutes a separate ground of recovery.

(b) A person is subject to a civil penalty if the person:

(1) is in violation of Section [247.021](#); or

(2) has been determined to be in violation of Section [247.021](#) and violates any other provision of this chapter or fails to comply with a rule adopted under this chapter.

(c) The amount of a civil penalty under Subsection (b) may not be less than \$1,000 or more than \$10,000 for each act of violation. Each day of a continuing violation constitutes a separate ground of recovery.

(d) The attorney general may institute and conduct a suit to collect a penalty and fees under this section at the request of the department. If the attorney general fails to notify the department within 30 days of referral from the department that the attorney general will accept the case, the department shall refer the case to the local district attorney, county attorney, or city attorney. The district attorney, county attorney, or city attorney shall file suit in a district court to collect and retain the penalty.

(e) Investigation and attorney's fees may not be assessed or collected by or on behalf of the department or other state agency unless a penalty described under this chapter is assessed.

(f) The department and attorney general, or other legal representative as described in Subsection (d), shall work in close cooperation throughout any legal proceedings requested by the department.

(g) The commissioner must approve any settlement agreement to a suit brought under this chapter.

(h) If a person who is liable under this section fails to pay any amount the person is obligated to pay under this section, the state may seek satisfaction from any owner, other controlling person, or affiliate of the person found liable. The owner, other

controlling person, or affiliate may be found liable in the same suit or in another suit on a showing by the state that the amount to be paid has not been paid or otherwise legally discharged. The executive commissioner by rule may establish a method for satisfying an obligation imposed under this section from an insurance policy, letter of credit, or other contingency fund.

(i) In this section, "affiliate" means:

(1) with respect to a partnership other than a limited partnership, each partner of the partnership;

(2) with respect to a corporation:

(A) an officer;

(B) a director;

(C) a stockholder who owns, holds, or has the power to vote at least 10 percent of any class of securities issued by the corporation, regardless of whether the power is of record or beneficial; and

(D) a controlling individual;

(3) with respect to an individual:

(A) each partnership and each partner in the partnership in which the individual or any other affiliate of the individual is a partner; and

(B) each corporation or other business entity in which the individual or another affiliate of the individual is:

(i) an officer;

(ii) a director;

(iii) a stockholder who owns, holds, or has the power to vote at least 10 percent of any class of securities issued by the corporation, regardless of whether the power is of record or beneficial; and

(iv) a controlling individual;

(4) with respect to a limited partnership:

(A) a general partner; and

(B) a limited partner who is a controlling individual;

(5) with respect to a limited liability company:

(A) an owner who is a manager under the Texas Limited Liability Company Law as described by Section [1.008\(e\)](#),

Business Organizations Code; and

(B) each owner who is a controlling individual;
and

(6) with respect to any other business entity, a controlling individual.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 114, eff. Sept. 1, 1991.
Renumbered from Sec. 247.044 and amended by Acts 1991, 72nd Leg.,
ch. 637, art. 2, Sec. 1, eff. Sept. 1, 1991. Amended by Acts 1997,
75th Leg., ch. 416, Sec. 4, eff. Sept. 1, 1997; Acts 1997, 75th
Leg., ch. 1088, Sec. 4, eff. Sept. 1, 1997; Acts 1999, 76th Leg.,
ch. 62, Sec. 11.03, eff. Sept. 1, 1999; Acts 1999, 76th Leg., ch.
233, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1194 (H.B. [1168](#)), Sec. 9, eff.
September 1, 2007.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. [219](#)), Sec. 3.0712,
eff. April 2, 2015.

Sec. 247.0451. ADMINISTRATIVE PENALTY. (a) The
commission may assess an administrative penalty against a person
who:

(1) violates this chapter or a rule, standard, or
order adopted under this chapter or a term of a license issued under
this chapter;

(2) makes a false statement, that the person knows or
should know is false, of a material fact:

(A) on an application for issuance or renewal of
a license or in an attachment to the application; or

(B) with respect to a matter under investigation
by the commission;

(3) refuses to allow a representative of the
commission to inspect:

(A) a book, record, or file required to be
maintained by an assisted living facility; or

(B) any portion of the premises of an assisted
living facility;

(4) wilfully interferes with the work of a

representative of the commission or the enforcement of this chapter;

(5) wilfully interferes with a representative of the commission preserving evidence of a violation of this chapter or a rule, standard, or order adopted under this chapter or a term of a license issued under this chapter;

(6) fails to pay a penalty assessed under this chapter not later than the 30th day after the date the assessment of the penalty becomes final; or

(7) fails to notify the commission of a change of ownership before the effective date of the change of ownership.

(b) Except as provided by Section [247.0452\(c\)](#), the penalty may not exceed:

(1) \$5,000 for each violation that:

(A) represents a pattern of violation that results in actual harm or is widespread in scope and results in actual harm; or

(B) constitutes an immediate threat to the health or safety of a resident; or

(2) \$1,000 for each other violation.

(c) The executive commissioner shall establish gradations of penalties in accordance with the relative seriousness of the violation.

(d) In determining the amount of a penalty, the commission shall consider any matter that justice may require, but must consider each of the following and make a record of the extent to which each of the following was considered:

(1) the gradations of penalties established under Subsection (c);

(2) the seriousness of the violation, including the nature, circumstances, extent, and gravity of the prohibited act and the hazard or potential hazard created by the act to the health or safety of the public;

(3) the history of previous violations;

(4) deterrence of future violations;

(5) efforts to correct the violation; and

(6) the size of the facility and of the business entity

that owns the facility.

(e) A penalty assessed under Subsection (a)(6) is in addition to the penalty previously assessed and not timely paid.

(f) The commission may not assess a penalty under this section against a resident of an assisted living facility unless the resident is also an employee of the facility or a controlling person.

(g) The commission shall develop and use a system to record and track the scope and severity of each violation of this chapter or a rule, standard, or order adopted under this chapter for the purpose of assessing an administrative penalty for the violation or taking some other enforcement action against the appropriate assisted living facility to deter future violations. The system:

(1) must be comparable to the system used by the Centers for Medicare and Medicaid Services to categorize the scope and severity of violations for nursing homes; and

(2) may be modified, as appropriate, to reflect changes in industry practice or changes made to the system used by the Centers for Medicare and Medicaid Services.

(h) In this section, "actual harm," "immediate threat to the health or safety of a resident," "pattern of violation," and "widespread in scope" have the meanings assigned by Section [247.0452](#).

Added by Acts 2001, 77th Leg., ch. 1248, Sec. 8, eff. Sept. 1, 2001.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 809 (S.B. [1318](#)), Sec. 16, eff. September 1, 2007.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. [219](#)), Sec. 3.0713, eff. April 2, 2015.

Acts 2017, 85th Leg., R.S., Ch. 836 (H.B. [2025](#)), Sec. 8, eff. September 1, 2017.

Sec. 247.0452. RIGHT TO CORRECT. (a) The commission may not collect an administrative penalty from an assisted living facility under Section [247.0451](#) if, not later than the 45th day after the date the facility receives notice under Section [247.0453](#)(c), the facility corrects the violation.

(b) Subsection (a) does not apply:

(1) to a violation that the commission determines represents a pattern of violation that results in actual harm;

(2) to a violation that the commission determines is widespread in scope and results in actual harm;

(3) to a violation that the commission determines is widespread in scope, constitutes a potential for actual harm, and relates to:

(A) resident assessment;

(B) staffing, including staff training;

(C) administration of medication;

(D) infection control;

(E) restraints; or

(F) emergency preparedness and response;

(4) to a violation that the commission determines constitutes an immediate threat to the health or safety of a resident;

(5) to a violation described by Sections [247.0451](#)(a)(2)-(7) or a violation of Section [260A.014](#) or [260A.015](#);

(6) to a second or subsequent violation of:

(A) a right of the same resident under Section [247.064](#); or

(B) the same right of all residents under Section [247.064](#);

(7) to a violation described by Section [247.066](#), which contains its own right to correct provisions; or

(8) to a second or subsequent violation of Section [326.002](#) that occurs before the second anniversary of the date of the first violation.

(c) An assisted living facility that corrects a violation must maintain the correction. If the facility fails to maintain the correction until at least the first anniversary of the date the correction was made, the commission may assess and collect an administrative penalty for the subsequent violation. An administrative penalty assessed under this subsection is equal to three times the amount of the original penalty assessed but not collected. The commission is not required to provide the facility

with an opportunity under this section to correct the subsequent violation.

(d) In this section:

(1) "Actual harm" means a negative outcome that compromises a resident's physical, mental, or emotional well-being.

(2) "Immediate threat to the health or safety of a resident" means a situation that causes, or is likely to cause, serious injury, harm, or impairment to or the death of a resident.

(3) "Pattern of violation" means repeated, but not pervasive, failures of an assisted living facility to comply with this chapter or a rule, standard, or order adopted under this chapter that:

(A) result in a violation; and

(B) are found throughout the services provided by the facility or that affect or involve the same residents or facility employees.

(4) "Widespread in scope" means a violation of this chapter or a rule, standard, or order adopted under this chapter that:

(A) is pervasive throughout the services provided by the assisted living facility; or

(B) represents a systemic failure by the assisted living facility that affects or has the potential to affect a large portion of or all of the residents of the facility.

Added by Acts 2001, 77th Leg., ch. 1248, Sec. 8, eff. Sept. 1, 2001.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 809 (S.B. [1318](#)), Sec. 17, eff. September 1, 2007.

Acts 2011, 82nd Leg., 1st C.S., Ch. 7 (S.B. [7](#)), Sec. 1.05(k), eff. September 28, 2011.

Acts 2017, 85th Leg., R.S., Ch. 836 (H.B. [2025](#)), Sec. 9, eff. September 1, 2017.

Sec. 247.0453. REPORT RECOMMENDING ADMINISTRATIVE PENALTY.

(a) The department shall issue a preliminary report stating the facts on which the department concludes that a violation of this

chapter or a rule, standard, or order adopted under this chapter or a term of a license issued under this chapter has occurred if the department has:

- (1) examined the possible violation and facts surrounding the possible violation; and

- (2) concluded that a violation has occurred.

- (b) The report may recommend a penalty under Section [247.0451](#) and the amount of the penalty.

- (c) The department shall give written notice of the report to the person charged with the violation not later than the 10th day after the date on which the report is issued. The notice must include:

- (1) a brief summary of the charges;

- (2) a statement of the amount of penalty recommended;

- (3) a statement of whether the violation is subject to correction under Section [247.0452](#) and, if the violation is subject to correction under that section, a statement of:

- (A) the date on which the assisted living facility must file with the department a plan of correction to be approved by the department; and

- (B) the date on which the plan of correction must be completed to avoid assessment of the penalty; and

- (4) a statement that the person charged has a right to a hearing on the occurrence of the violation, the amount of the penalty, or both.

- (d) Not later than the 20th day after the date on which the notice under Subsection (c) is received, the person charged may:

- (1) give to the department written consent to the department's report, including the recommended penalty; or

- (2) make a written request for a hearing.

- (e) If the violation is subject to correction under Section [247.0452](#), the assisted living facility shall submit a plan of correction to the department for approval not later than the 10th day after the date on which the notice under Subsection (c) is received.

- (f) If the violation is subject to correction under Section [247.0452](#), and the person reports to the department that the

violation has been corrected, the department shall inspect the correction or take any other step necessary to confirm the correction and shall notify the person that:

(1) the correction is satisfactory and a penalty will not be assessed; or

(2) the correction is not satisfactory and a penalty is recommended.

(g) Not later than the 20th day after the date on which a notice under Subsection (f)(2) is received, the person charged may:

(1) give to the department written consent to the department's report, including the recommended penalty; or

(2) make a written request for a hearing.

(h) If the person charged with the violation consents to the penalty recommended by the department or does not timely respond to a notice sent under Subsection (c) or (f)(2), the department shall assess the recommended penalty.

(i) If the department assesses the recommended penalty, the department shall give written notice to the person charged of the decision and the person shall pay the penalty.

Added by Acts 2001, 77th Leg., ch. 1248, Sec. 8, eff. Sept. 1, 2001.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0714, eff. April 2, 2015.

Sec. 247.0454. HEARING ON ADMINISTRATIVE PENALTY. (a) An administrative law judge shall order a hearing and the department shall give notice of the hearing if a person charged with a violation under Section 247.0451 timely requests a hearing.

(b) The hearing shall be held before an administrative law judge.

(c) The administrative law judge shall make findings of fact and conclusions of law and promptly issue to the department a written proposal for decision regarding the occurrence of a violation of this chapter or a rule, standard, or order adopted under this chapter or a term of a license issued under this chapter and a recommendation regarding the amount of the proposed penalty if a penalty is warranted.

(d) Based on the findings of fact and conclusions of law and the recommendation of the administrative law judge, the department by order may:

(1) find that a violation has occurred and assess an administrative penalty; or

(2) find that a violation has not occurred.

(e) If the department finds that a violation has not occurred, the department shall order that all records reflecting that the department found a violation had occurred and attempted to impose an administrative penalty shall be expunged except:

(1) records obtained by the department during its investigation; and

(2) the administrative law judge's findings of fact.

(f) Proceedings under this section are subject to Chapter [2001](#), Government Code.

Added by Acts 2001, 77th Leg., ch. 1248, Sec. 8, eff. Sept. 1, 2001.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. [219](#)), Sec. 3.0715, eff. April 2, 2015.

Sec. 247.0455. NOTICE AND PAYMENT OF ADMINISTRATIVE PENALTY; INTEREST; REFUND. (a) The department shall give notice of the findings made under Section [247.0454](#)(d) to the person charged. If the department finds that a violation has occurred, the department shall give to the person charged written notice of:

(1) the findings;

(2) the amount of the administrative penalty;

(3) the rate of interest payable with respect to the penalty and the date on which interest begins to accrue;

(4) whether action under Section [247.0457](#) is required in lieu of payment of all or part of the penalty; and

(5) the person's right to judicial review of the department order.

(b) Not later than the 30th day after the date on which the department order is final, the person charged with the penalty shall:

(1) pay the full amount of the penalty; or

(2) file a petition for judicial review contesting the occurrence of the violation, the amount of the penalty, the department's dissatisfaction with efforts to correct the violation, or any combination of these issues.

(c) Notwithstanding Subsection (b), the department may permit the person to pay a penalty in installments or may require the person to use all or part of the amount of the penalty in accordance with Section [247.0457](#).

(d) If the person does not pay the penalty within the period provided by Subsection (b) or in accordance with Subsection (c), if applicable:

(1) the penalty is subject to interest; and

(2) the department may refer the matter to the attorney general for collection of the penalty and interest.

(e) Interest under Subsection (d)(1) accrues:

(1) at a rate equal to the rate charged on loans to depository institutions by the New York Federal Reserve Bank; and

(2) for the period beginning on the day after the date on which the penalty becomes due and ending on the date the penalty is paid.

(f) If the amount of the penalty is reduced or the assessment of a penalty is not upheld on judicial review, the department shall:

(1) remit to the person charged the appropriate amount of any penalty payment plus accrued interest; or

(2) execute a release of the supersedeas bond if one has been posted.

(g) Accrued interest on amounts remitted by the department under Subsection (f)(1) shall be paid:

(1) at a rate equal to the rate charged on loans to depository institutions by the New York Federal Reserve Bank; and

(2) for the period beginning on the date the penalty is paid and ending on the date the penalty is remitted to the person charged.

Added by Acts 2001, 77th Leg., ch. 1248, Sec. 8, eff. Sept. 1, 2001.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. [219](#)), Sec. 3.0716,

eff. April 2, 2015.

Sec. 247.0456. APPLICATION OF OTHER LAW. The department may not assess a monetary penalty under this chapter and a monetary penalty under Chapter 32, Human Resources Code, for the same act or failure to act.

Added by Acts 2001, 77th Leg., ch. 1248, Sec. 8, eff. Sept. 1, 2001.

Sec. 247.0457. AMELIORATION OF VIOLATION. (a) In lieu of demanding payment of an administrative penalty assessed under Section 247.0451, the department in accordance with this section may allow the person to use, under the supervision of the department, any portion of the penalty to ameliorate the violation or to improve services, other than administrative services, in the assisted living facility affected by the violation.

(b) The department shall offer amelioration to a person for a charged violation if the department determines that the violation does not constitute immediate jeopardy to the health and safety of a resident of the assisted living facility.

(c) The department shall offer amelioration to a person under this section not later than the 10th day after the date the person receives from the department a final notification of the recommended assessment of an administrative penalty that is sent to the person after an informal dispute resolution process but before an administrative hearing under Section 247.0454.

(d) A person to whom amelioration has been offered must file a plan for amelioration not later than the 45th day after the date the person receives the offer of amelioration from the department. In submitting the plan, the person must agree to waive the person's right to an administrative hearing under Section 247.0454 if the department approves the plan.

(e) At a minimum, a plan for amelioration must:

(1) propose changes to the management or operation of the assisted living facility that will improve services to or quality of care of residents of the assisted living facility;

(2) identify, through measurable outcomes, the ways in which and the extent to which the proposed changes will improve

services to or quality of care of residents of the assisted living facility;

(3) establish clear goals to be achieved through the proposed changes;

(4) establish a time line for implementing the proposed changes; and

(5) identify specific actions necessary to implement the proposed changes.

(f) A plan for amelioration may include proposed changes to:

(1) improve staff recruitment and retention;

(2) offer or improve dental services for residents; and

(3) improve the overall quality of life for residents.

(g) The department may require that an amelioration plan propose changes that would result in conditions that exceed the requirements of this chapter or the rules adopted under this chapter.

(h) The department shall approve or deny an amelioration plan not later than the 45th day after the date the department receives the plan. On approval of a person's plan, the commission or the State Office of Administrative Hearings, as appropriate, shall deny a pending request for a hearing submitted by the person under Section [247.0453](#).

(i) The department may not offer amelioration to a person:

(1) more than three times in a two-year period; or

(2) more than one time in a two-year period for the same or similar violation.

Added by Acts 2001, 77th Leg., ch. 1248, Sec. 8, eff. Sept. 1, 2001.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. [219](#)), Sec. 3.0717, eff. April 2, 2015.

Sec. 247.0458. USE OF ADMINISTRATIVE PENALTY. Money from an administrative penalty collected under this subchapter may be appropriated for the purpose of funding the grant program established under Section [161.074](#), Human Resources Code.

Added by Acts 2005, 79th Leg., Ch. 786 (S.B. [52](#)), Sec. 3, eff.

September 1, 2005.

Sec. 247.0459. VIOLATION OF LAW RELATING TO ADVANCE DIRECTIVES. (a) The department shall assess an administrative penalty against an assisted living facility that violates Section [166.004](#).

(b) A penalty assessed under this section shall be \$500.

(c) The penalty shall be assessed in accordance with department rules. The rules must provide for notice and an opportunity for a hearing.

Added by Acts 1999, 76th Leg., ch. 450, Sec. 2.05, eff. Sept. 1, 1999. Renumbered from Sec. 247.0455 and amended by by Acts 2001, 77th Leg., ch. 1248, Sec. 7, eff. Sept. 1, 2001.

Sec. 247.046. COOPERATION AMONG AGENCIES. The executive commissioner by rule for the department and the Department of Family and Protective Services and the attorney general by rule shall adopt a memorandum of understanding that:

(1) defines those agencies' responsibilities concerning assisted living facilities and coordinates those agencies' activities;

(2) details coordinated procedures to be used by those agencies in responding to complaints relating to neglect or abuse of residents of facilities, to substandard facilities, and to unlicensed facilities;

(3) identifies enforcement needs those agencies may have in order to perform their duties under the memorandum of understanding, including any need for access to information or to facilities under investigation or operating under a plan of correction; and

(4) provides a plan for correcting violations in substandard or unlicensed assisted living facilities that specifies the conditions under which it is appropriate to impose such a plan and that outlines a schedule of implementation for the plan.

Added by Acts 1991, 72nd Leg., ch. 349, Sec. 1, eff. June 5, 1991. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 8.093, eff. Sept. 1,

1995; Acts 1997, 75th Leg., ch. 416, Sec. 5, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 233, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. [219](#)), Sec. 3.0718, eff. April 2, 2015.

Sec. 247.048. REGIONAL TRAINING FOR AGENCIES AND LOCAL GOVERNMENTS. The department periodically shall conduct regional training programs for representatives of local governments and appropriate state agencies relating to assisted living facility concerns. The training programs must provide to participants information relating to the assisted living facility industry, including information on:

(1) the general characteristics of assisted living facilities and residents of those facilities;

(2) the different types of assisted living facilities;

(3) the laws applicable to assisted living facilities;

and

(4) the authority of the department and other entities to enforce applicable laws.

Added by Acts 1999, 76th Leg., ch. 233, Sec. 1, eff. Sept. 1, 1999.

Sec. 247.049. USE OF REGULATORY REPORTS AND DOCUMENTS. (a) Except as otherwise provided by this section, a report or other document prepared by the department that relates to regulation of an assisted living facility is not admissible as evidence in a civil action to prove that the facility violated a standard prescribed under this chapter.

(b) Subsection (a) does not:

(1) bar the admission into evidence of department reports or other documents in an enforcement action in which the state or an agency or political subdivision of the state is a party, including:

(A) an action seeking injunctive relief under Section [247.044](#);

(B) an action seeking imposition of a civil penalty under Section [247.045](#);

(C) a contested case hearing involving denial, suspension, or revocation of a license issued under this chapter; and

(D) an action seeking imposition of an administrative penalty under this subchapter;

(2) bar the admission into evidence of department reports or other documents that are offered:

(A) to establish warning or notice to an assisted living facility of a relevant department determination; or

(B) under any rule or evidentiary predicate of the Texas Rules of Evidence;

(3) prohibit or limit the testimony of a department employee, in accordance with the Texas Rules of Evidence, as to observations, factual findings, conclusions, or determinations that an assisted living facility violated a standard prescribed under this chapter if the observations, factual findings, conclusions, or determinations were made in the discharge of the employee's official duties for the department; or

(4) prohibit or limit the use of department reports or other documents in depositions or other forms of discovery conducted in connection with a civil action if use of the reports or other documents appears reasonably calculated to lead to the discovery of admissible evidence.

Added by Acts 1999, 76th Leg., ch. 233, Sec. 1, eff. Sept. 1, 1999.
Amended by Acts 2001, 77th Leg., ch. 1248, Sec. 9, eff. Sept. 1, 2001.

Sec. 247.050. MONITORING OF UNLICENSED FACILITIES; REPORTING. (a) The executive commissioner shall adopt procedures to monitor the status of unlicensed assisted living facilities. As part of these procedures, the department shall:

(1) maintain a registry of all reported unlicensed assisted living facilities for the purpose of periodic follow-up by the field staff in each region; and

(2) prepare a quarterly report that shows the number of:

(A) complaints relating to unlicensed assisted

living facilities that are received;

- (B) complaints that are investigated;
- (C) unsubstantiated complaints;
- (D) substantiated complaints; and
- (E) cases referred to the attorney general.

(b) Repealed by Acts 2011, 82nd Leg., R.S., Ch. 990, Sec. 10(5), eff. June 17, 2011.

(c) The department shall file a copy of the quarterly reports required by this section with the substantive committees of each house of the legislature with jurisdiction over regulation of assisted living facilities.

(d) The department shall permanently retain at least one copy or one electronic source of information pertaining to complaints and investigations of unlicensed assisted living facilities used to maintain a registry as required under Subsection (a)(1) and used to prepare a report under Subsection (a)(2).

Added by Acts 1999, 76th Leg., ch. 233, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 974 (S.B. [344](#)), Sec. 5, eff. September 1, 2007.

Acts 2011, 82nd Leg., R.S., Ch. 879 (S.B. [223](#)), Sec. 3.09, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 879 (S.B. [223](#)), Sec. 3.18, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 990 (H.B. [1781](#)), Sec. 8, eff. June 17, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 990 (H.B. [1781](#)), Sec. 10(5), eff. June 17, 2011.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. [219](#)), Sec. 3.0719, eff. April 2, 2015.

Sec. 247.051. INFORMAL DISPUTE RESOLUTION. (a) The executive commissioner by rule shall establish an informal dispute resolution process to address disputes between an assisted living facility and the commission concerning a statement of violations prepared by the commission in accordance with this section. The process must provide for adjudication by an appropriate

disinterested person of disputes relating to a statement of violations. The informal dispute resolution process must require:

(1) the assisted living facility to request informal dispute resolution not later than the 10th day after the date of notification by the commission of the violation of a standard or standards;

(2) that the process be completed not later than the 90th day after the date of receipt of a request from the assisted living facility for informal dispute resolution;

(3) that, not later than the 20th business day after the date an assisted living facility requests an informal dispute resolution, the commission forward to the assisted living facility a copy of all information referenced in the disputed statement of violations or on which a citation is based in connection with the survey, inspection, investigation, or other visit, including any notes taken by or e-mails or messages sent by a commission employee involved with the survey, inspection, investigation, or other visit and excluding the following information:

(A) the name of any complainant, witness, or informant, which must be redacted from information provided to the assisted living facility;

(B) any information that would reasonably lead to the identification of a complainant, witness, or informant, which must be redacted from information provided to the assisted living facility;

(C) information obtained from or contained in the records of the facility;

(D) information that is publicly available; or

(E) information that is confidential by law;

(4) that full consideration is given to all factual arguments raised during the informal dispute resolution process;

(5) that full consideration is given during the informal dispute resolution process to the information provided by the assisted living facility and the commission;

(6) that ex parte communications concerning the substance of any argument relating to a survey, inspection, investigation, visit, or statement of violations under

consideration not occur between the informal dispute resolution staff and the assisted living facility or the commission;

(7) that the assisted living facility and the commission be given a reasonable opportunity to submit arguments and information supporting the position of the assisted living facility or the commission and to respond to arguments and information presented against them, provided the assisted living facility submits its arguments and supporting information not later than the 10th business day after the date of receipt of the materials provided under Subdivision (3); and

(8) that the commission bears the burden of proving the violation of a standard or standards.

(b) The commission may not delegate its responsibility to administer the informal dispute resolution process established by this section to another state agency.

(c) An assisted living facility requesting an informal dispute resolution under this section must reimburse the commission for any costs associated with the commission's preparation, copying, and delivery of information requested by the facility.

(d) A statement of violations prepared by the commission following a survey, inspection, investigation, or visit is confidential pending the outcome of the informal dispute resolution process. Information concerning the outcome of a survey, inspection, investigation, or visit may be posted on any website maintained by the commission while the dispute is pending if the posting clearly notes each finding that is in dispute.

(e) The commission may charge and the assisted living facility shall pay the reasonable costs associated with making the redactions required by Subsections (a)(3)(A) and (B).

Added by Acts 2001, 77th Leg., ch. 1248, Sec. 13, eff. Sept. 1, 2001.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 218 (H.B. 33), Sec. 1, eff. September 1, 2013.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0720, eff. April 2, 2015.

Acts 2017, 85th Leg., R.S., Ch. 590 (S.B. 924), Sec. 1, eff.

September 1, 2017.

SUBCHAPTER D. MISCELLANEOUS PROVISIONS

Sec. 247.061. COORDINATION BETWEEN AGENCIES. (a) The executive commissioner and the attorney general shall adopt by rule a memorandum of understanding that:

(1) defines the department's and the attorney general's responsibilities concerning assisted living facilities;

(2) outlines and coordinates procedures to be used by those agencies in responding to complaints concerning assisted living facilities; and

(3) provides a plan for correcting violations or deficiencies in assisted living facilities.

(b) The department shall prepare the initial draft of the memorandum of understanding and shall facilitate and ensure its adoption.

Added by Acts 1991, 72nd Leg., ch. 637, art. 2, Sec. 1, eff. Sept. 1, 1991. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 8.095, eff. Sept. 1, 1995. Renumbered from Sec. 247.062 and amended by Acts 1999, 76th Leg., ch. 233, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. [219](#)), Sec. 3.0721, eff. April 2, 2015.

Sec. 247.062. DIRECTORY OF ASSISTED LIVING FACILITIES; CONSUMERS' GUIDE. (a) The department shall prepare a directory of assisted living facilities that includes the name of the owner, the address and telephone number of the facility, the number of beds in the facility, and the facility's accessibility to persons with disabilities.

(b) The department shall revise the directory annually and shall make it available to the public.

(c) The department shall prepare a consumers' guide to assisted living facilities and make it available to the public. The consumers' guide shall provide information on licensing requirements for assisted living facilities, a brief description of

minimum standards for facilities, a copy of the residents' bill of rights, a copy of the providers' bill of rights, and any other information that the department determines may be useful to the public.

Added by Acts 1991, 72nd Leg., ch. 637, art. 2, Sec. 1, eff. Sept. 1, 1991. Renumbered from 247.063 and amended by Acts 1999, 76th Leg., ch. 233, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0722, eff. April 2, 2015.

Sec. 247.063. REFERRALS. (a) If the Department of State Health Services, the department, a local mental health authority, or a local intellectual and developmental disability authority refers a patient or client to an assisted living facility, the referral may not be made to a facility that is not licensed under this chapter.

(b) If the Department of State Health Services or a local mental health or intellectual and developmental disability authority gains knowledge of an assisted living facility that is not operated or licensed by the department or the authority and that has four or more residents who are unrelated to the proprietor of the facility, the Department of State Health Services or the authority shall report the name, address, and telephone number of the facility to the department.

Added by Acts 1991, 72nd Leg., ch. 637, art. 2, Sec. 1, eff. Sept. 1, 1991. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 8.096, eff. Sept. 1, 1995. Renumbered from Sec. 247.064 and amended by Acts 1999, 76th Leg., ch. 233, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0723, eff. April 2, 2015.

Sec. 247.0631. ACCESS. An employee of the Department of State Health Services or an employee of a local mental health or intellectual and developmental disability authority may enter an assisted living facility as necessary to provide services to a

resident of the facility.

Added by Acts 1999, 76th Leg., ch. 233, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. [219](#)), Sec. 3.0724, eff. April 2, 2015.

Sec. 247.064. RESIDENTS' BILL OF RIGHTS. (a) Each assisted living facility shall post a residents' bill of rights in a prominent place in the facility.

(b) The residents' bill of rights must provide that each resident in the assisted living facility has the right to:

- (1) manage the resident's financial affairs;
- (2) determine the resident's dress, hair style, or other personal effects according to individual preference, except that the resident has the responsibility to maintain personal hygiene;
- (3) retain and use personal property in the resident's immediate living quarters and to have an individual locked cabinet in which to keep personal property;
- (4) receive and send unopened mail;
- (5) unaccompanied access to a telephone at a reasonable hour or in case of an emergency or personal crisis;
- (6) privacy;
- (7) unrestricted communication, including personal visitation with any person of the resident's choice, at any reasonable hour, including family members and representatives of advocacy groups and community service organizations;
- (8) make contacts with the community and to achieve the highest level of independence, autonomy, and interaction with the community of which the resident is capable;
- (9) present grievances on behalf of the resident or others to the operator, state agencies, or other persons without threat of reprisal in any manner;
- (10) a safe and decent living environment and considerate and respectful care that recognizes the dignity and individuality of the resident;
- (11) refuse to perform services for the facility,

except as contracted for by the resident and operator;

(12) practice the religion of the resident's choice;

(13) leave the facility temporarily or permanently, subject to contractual or financial obligations; and

(14) not be deprived of any constitutional, civil, or legal right solely by reason of residence in an assisted living facility.

(c) The residents' bill of rights must be written in the primary language of each resident of the facility and must also provide the toll-free telephone number of the department for reporting abuse or neglect.

(d) The rights provided under this section do not take precedence over health and safety rights of other residents of the facility.

(e) The department shall develop a residents' bill of rights in accordance with this section and provide a copy to each facility. The copy shall be written in the primary language of each resident of the facility.

Added by Acts 1991, 72nd Leg., ch. 637, art. 2, Sec. 1, eff. Sept. 1, 1991. Renumbered from Sec. 247.065 and amended by Acts 1999, 76th Leg., ch. 233, Sec. 1, eff. Sept. 1, 1999.

Sec. 247.065. PROVIDERS' BILL OF RIGHTS. (a) Each assisted living facility shall post a providers' bill of rights in a prominent place in the facility.

(b) The providers' bill of rights must provide that a provider of personal care services has the right to:

(1) be shown consideration and respect that recognizes the dignity and individuality of the provider and assisted living facility;

(2) terminate a resident's contract for just cause after a written 30-day notice;

(3) terminate a contract immediately, after notice to the department, if the provider finds that a resident creates a serious or immediate threat to the health, safety, or welfare of other residents of the assisted living facility;

(4) present grievances, file complaints, or provide

information to state agencies or other persons without threat of reprisal or retaliation;

(5) refuse to perform services for the resident or the resident's family other than those contracted for by the resident and the provider;

(6) contract with the community to achieve the highest level of independence, autonomy, interaction, and services to residents;

(7) access to patient information concerning a client referred to the facility, which must remain confidential as provided by law;

(8) refuse a person referred to the facility if the referral is inappropriate;

(9) maintain an environment free of weapons and drugs; and

(10) be made aware of a resident's problems, including self-abuse, violent behavior, alcoholism, or drug abuse.

Added by Acts 1991, 72nd Leg., ch. 637, art. 2, Sec. 1, eff. Sept. 1, 1991. Renumbered from Sec. 247.066 and amended by Acts 1999, 76th Leg., ch. 233, Sec. 1, eff. Sept. 1, 1999.

Sec. 247.066. APPROPRIATE PLACEMENT DETERMINATION. (a) The department may not require the removal and relocation of a resident of an assisted living facility if the resident's presence in the facility does not endanger other residents and the resident can receive adequate care at the facility through services:

(1) provided by the facility in accordance with its license; or

(2) obtained by the resident from other providers.

(b) In assessing whether a resident can receive adequate care at a facility, the department shall consider all relevant factors, including the placement preference expressed by the resident with the agreement of the facility operator, the resident's physician, and the resident's family members or other representatives.

(b-1) If a facility identifies a resident who the facility believes is inappropriately placed at the facility, the facility is

not required to move the resident if the facility obtains the written statements and waiver prescribed by Subsection (c).

(c) If a resident is inappropriately placed at a facility, the facility is not required to move the resident if, not later than the 10th business day after the date that the facility determines or is informed of the department's determination that a resident is inappropriately placed at the facility, the facility:

(1) obtains a written assessment from a physician that the resident is appropriately placed;

(2) obtains a written statement:

(A) from the resident that the resident wishes to remain in the facility; or

(B) from a family member of the resident that the family member wishes for the resident to remain in the facility, if the resident lacks capacity to give a statement under this subsection;

(3) states in writing that the facility wishes for the resident to remain in the facility; and

(4) applies for and obtains a waiver from the department of all applicable requirements for evacuation that the facility does not meet with respect to the resident, if the facility does not meet all requirements for the evacuation of residents with respect to the resident.

(d) If the department determines that a resident is inappropriately placed at a facility and the facility either agrees with the determination or does not obtain the written statements and waiver prescribed by Subsection (c) that would allow the resident to remain in the facility, the facility shall discharge the resident. The resident is allowed 30 days after the date of discharge to move from the facility. A discharge required under this subsection must be made notwithstanding:

(1) any other law, including any law relating to the rights of residents and any obligations imposed under the Property Code; and

(2) the terms of any contract.

(d-1) If a facility is required to discharge the resident because the facility has not obtained the written statements

prescribed by Subsection (c) or the department does not approve a waiver based on the written statements submitted, the department may:

(1) assess an administrative penalty against the facility if the facility intentionally or repeatedly disregards department criteria for obtaining a waiver for inappropriate placement of a resident;

(2) seek an emergency suspension or closing order against the facility under Section 247.042 if the department determines there is a significant risk to the residents of the facility and an immediate threat to the health and safety of the residents; or

(3) seek other sanctions against the facility under Subchapter C in lieu of an emergency suspension or closing order if the department determines there is a significant risk to a resident of the facility and an immediate threat to the health and safety of a resident.

(d-2) The executive commissioner by rule shall develop criteria under which the department may determine when a facility has intentionally or repeatedly disregarded the waiver process.

(e) To facilitate obtaining the written statements required under Subsections (b-1) and (c)(1)-(3), the department shall develop standard forms that must be used under Subsections (b-1) or (c)(1)-(3), as appropriate. The executive commissioner by rule shall develop criteria under which the department will determine, based on a resident's specific situation, whether it will grant or deny a request for a waiver under Subsection (b-1) or (c)(4).

(f) The department shall ensure that each facility and resident is aware of the waiver process described by Subsection (c) for aging in place. A facility must include with the facility disclosure statement required under Section 247.026(b)(4)(B) information regarding the policies and procedures for aging in place described by this section.

(g) The department, in cooperation with assisted living service providers, shall develop cost-effective training regarding aging in place, retaliation, and other issues determined by the department.

(h) The department shall require surveyors, facility supervisors, and other staff, as appropriate, to complete the training described by Subsection (g) annually.

Added by Acts 1999, 76th Leg., ch. 233, Sec. 1, eff. Sept. 1, 1999.

Amended by Acts 2001, 77th Leg., ch. 1248, Sec. 14, eff. Sept. 1, 2001.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 305 (H.B. [2109](#)), Sec. 1, eff. June 17, 2011.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. [219](#)), Sec. 3.0725, eff. April 2, 2015.

Sec. 247.067. HEALTH CARE PROFESSIONALS. (a) In this section, "health care professional" means an individual licensed, certified, or otherwise authorized to administer health care, for profit or otherwise, in the ordinary course of business or professional practice. The term includes a physician, registered nurse, licensed vocational nurse, licensed dietitian, physical therapist, and occupational therapist.

(b) Unless otherwise prohibited by law, a health care professional may be employed by an assisted living facility to provide at the facility to the facility's residents services that are authorized by this chapter and that are within the professional's scope of practice. This subsection does not authorize a facility to provide ongoing services comparable to the services available in an institution licensed under Chapter [242](#). A health care professional providing services under this subsection shall maintain medical records of those services in accordance with the licensing, certification, or other regulatory standards applicable to the health care professional under law.

(c) A resident of an assisted living facility has the right to contract with a home and community support services agency licensed under Chapter [142](#) or with an independent health professional for health care services.

Added by Acts 1999, 76th Leg., ch. 233, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2011, 82nd Leg., 1st C.S., Ch. 7 (S.B. [7](#)), Sec. 1.08(c),

eff. September 28, 2011.

Sec. 247.068. RETALIATION PROHIBITED. (a) A person licensed under this chapter may not retaliate against a person for filing a complaint, presenting a grievance, or providing in good faith information relating to personal care services provided by the license holder.

(b) This section does not prohibit a license holder from terminating an employee for a reason other than retaliation.

(c) A department employee may not retaliate against an assisted living facility, an employee of an assisted living facility, or a person in control of an assisted living facility for:

(1) complaining about the conduct of a department employee;

(2) disagreeing with a department employee about the existence of a violation of this chapter or a rule adopted under this chapter; or

(3) asserting a right under state or federal law.

Added by Acts 1999, 76th Leg., ch. 233, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 305 (H.B. [2109](#)), Sec. 2, eff. June 17, 2011.

Sec. 247.069. CONSUMER CHOICE FOR ASSISTED LIVING IN COMMUNITY CARE PROGRAMS. The community based alternatives program and the residential care programs, which provide an assisted living option to consumers, shall provide a consumer the opportunity to choose an assisted living facility that meets the department's licensing standards relating to facility construction without regard to the number of units in the facility, if consumers are advised of all other community care options.

Added by Acts 2005, 79th Leg., Ch. 870 (S.B. [1055](#)), Sec. 2, eff. September 1, 2005.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 809 (S.B. [1318](#)), Sec. 18, eff. September 1, 2007.

Sec. 247.070. GUARDIANSHIP ORDERS. An assisted living facility shall make a reasonable effort to request a copy of any court order appointing a guardian of a resident or a resident's estate from the resident's nearest relative or the person responsible for the resident's support. An assisted living facility that receives a copy of a court order appointing a guardian of a resident or a resident's estate shall maintain a copy of the court order in the resident's medical records.

Added by Acts 2015, 84th Leg., R.S., Ch. 724 (H.B. [1337](#)), Sec. 2, eff. September 1, 2015.

Sec. 247.071. LOCAL APPROVAL OF ASSISTED LIVING FACILITY.

(a) In this section, "governmental unit" means a municipality, county, or other political subdivision of the state that has the authority to adopt a building code or fire code.

(b) A governmental unit that adopts a building code or fire code governs the interpretation and enforcement of that building code or fire code.

(c) The commission may not issue a citation for a violation of a building code or fire code adopted by a governmental unit to an assisted living facility that presents evidence of the governmental unit's determination that the assisted living facility is compliant with the code. If the commission cites an assisted living facility for a building code or fire code violation and the assisted living facility subsequently provides the evidence described by this subsection, the commission shall rescind the citation.

(d) Subsection (c) does not restrict the authority of the commission to issue a citation to an assisted living facility for a violation of any National Fire Protection Association codes or standards adopted under this chapter.

Added by Acts 2017, 85th Leg., R.S., Ch. 66 (S.B. [1049](#)), Sec. 3, eff. September 1, 2017.

SUBCHAPTER E. ARBITRATION

Sec. 247.081. SCOPE OF SUBCHAPTER. This subchapter applies to any dispute between a facility licensed under this chapter and

the department relating to:

- (1) renewal of a license under Section 247.023;
- (2) suspension, revocation, or denial of a license under Section 247.041;
- (3) assessment of a civil penalty under Section 247.045; or
- (4) assessment of an administrative penalty under Section 247.0451.

Added by Acts 2013, 83rd Leg., R.S., Ch. 218 (H.B. 33), Sec. 2, eff. September 1, 2013.

Sec. 247.082. ELECTION OF ARBITRATION. (a) Except as provided by Subsection (d), an affected facility may elect binding arbitration of any dispute to which this subchapter applies. Arbitration under this subchapter is an alternative to a contested case hearing or to a judicial proceeding relating to the assessment of a civil penalty.

(b) An affected facility may elect arbitration under this subchapter by filing the election with the court in which the lawsuit is pending and sending notice of the election to the department and the office of the attorney general. The election must be filed not later than the 10th day after the date on which the answer is due or the date on which the answer is filed, whichever is earlier. If a civil penalty is requested after the initial filing of a Section 242.094 action through the filing of an amended or supplemental pleading, an affected facility must elect arbitration not later than the 10th day after the date on which the amended or supplemental pleading is served on the affected facility or the facility's counsel.

(c) The department may elect arbitration under this subchapter by filing the election with the court in which the lawsuit is pending and by notifying the facility of the election not later than the date on which the facility may elect arbitration under Subsection (b).

(d) Arbitration may not be used to resolve a dispute related to an affected facility that has had an arbitration award levied against it in the previous five years.

(e) If arbitration is not permitted under this subchapter or the election of arbitration is not timely filed:

(1) the court shall dismiss the arbitration election and retain jurisdiction of the lawsuit; and

(2) the State Office of Administrative Hearings shall dismiss the arbitration and does not have jurisdiction over the lawsuit.

(f) An election to engage in arbitration under this subchapter is irrevocable and binding on the facility and the department.

Added by Acts 2013, 83rd Leg., R.S., Ch. 218 (H.B. 33), Sec. 2, eff. September 1, 2013.

Sec. 247.083. ARBITRATION PROCEDURES. (a) The arbitration shall be conducted by an arbitrator.

(b) The arbitration and the appointment of the arbitrator shall be conducted in accordance with rules adopted by the chief administrative law judge of the State Office of Administrative Hearings. Before adopting rules under this subsection, the chief administrative law judge shall consult with the department and shall consider appropriate rules developed by any nationally recognized association that performs arbitration services.

(c) The party that elects arbitration shall pay the cost of the arbitration. The total fees and expenses paid for an arbitrator for a day may not exceed \$1,000.

(d) The State Office of Administrative Hearings may designate a nationally recognized association that performs arbitration services to conduct arbitrations under this subchapter and may, after consultation with the department, contract with that association for the arbitrations.

(e) On request by the department, the attorney general may represent the department in the arbitration.

Added by Acts 2013, 83rd Leg., R.S., Ch. 218 (H.B. 33), Sec. 2, eff. September 1, 2013.

Sec. 247.084. ARBITRATOR QUALIFICATIONS. Each arbitrator must be on an approved list of a nationally recognized association

that performs arbitration services or be otherwise qualified as provided in the rules adopted under Section 247.083(b).

Added by Acts 2013, 83rd Leg., R.S., Ch. 218 (H.B. 33), Sec. 2, eff. September 1, 2013.

Sec. 247.085. ARBITRATOR SELECTION. The arbitrator shall be appointed in accordance with the rules adopted under Section 247.083(b).

Added by Acts 2013, 83rd Leg., R.S., Ch. 218 (H.B. 33), Sec. 2, eff. September 1, 2013.

Sec. 247.086. ARBITRATOR DUTIES. The arbitrator shall:

(1) protect the interests of the department and the facility;

(2) ensure that all relevant evidence has been disclosed to the arbitrator, department, and facility; and

(3) render an order consistent with this chapter and the rules adopted under this chapter.

Added by Acts 2013, 83rd Leg., R.S., Ch. 218 (H.B. 33), Sec. 2, eff. September 1, 2013.

Sec. 247.087. SCHEDULING OF ARBITRATION. (a) The arbitrator conducting the arbitration shall schedule arbitration to be held not later than the 90th day after the date the arbitrator is selected and shall notify the department and the facility of the scheduled date.

(b) The arbitrator may grant a continuance of the arbitration at the request of the department or facility. The arbitrator may not unreasonably deny a request for a continuance.

Added by Acts 2013, 83rd Leg., R.S., Ch. 218 (H.B. 33), Sec. 2, eff. September 1, 2013.

Sec. 247.088. EXCHANGE AND FILING OF INFORMATION. Not later than the seventh day before the first day of arbitration, the department and the facility shall exchange and file with the arbitrator:

(1) all documentary evidence not previously exchanged

and filed that is relevant to the dispute; and

(2) information relating to a proposed resolution of the dispute.

Added by Acts 2013, 83rd Leg., R.S., Ch. 218 (H.B. 33), Sec. 2, eff. September 1, 2013.

Sec. 247.089. ATTENDANCE. (a) The arbitrator may proceed in the absence of any party or representative of a party who, after notice of the proceeding, fails to be present or to obtain a postponement.

(b) An arbitrator may not make an order solely on the default of a party and shall require the party who is present to submit evidence, as required by the arbitrator, before making an award.

Added by Acts 2013, 83rd Leg., R.S., Ch. 218 (H.B. 33), Sec. 2, eff. September 1, 2013.

Sec. 247.090. TESTIMONY; RECORD. (a) The arbitrator may require witnesses to testify under oath and shall require testimony under oath if requested by the department or the facility.

(b) The department shall make an electronic recording of the proceeding.

(c) An official stenographic record of the proceeding is not required, but the department or the facility may make a stenographic record. The party that makes the stenographic record shall pay the expense of having the record made.

Added by Acts 2013, 83rd Leg., R.S., Ch. 218 (H.B. 33), Sec. 2, eff. September 1, 2013.

Sec. 247.091. EVIDENCE. (a) The department or the facility may offer evidence and shall produce additional evidence as the arbitrator considers necessary to understand and resolve the dispute.

(b) The arbitrator is the judge of the relevance and materiality of the evidence offered. Strict conformity to rules applicable to judicial proceedings is not required.

Added by Acts 2013, 83rd Leg., R.S., Ch. 218 (H.B. 33), Sec. 2, eff.

September 1, 2013.

Sec. 247.092. CLOSING STATEMENTS; BRIEFS. The department and the facility may present closing statements, but the record does not remain open for written briefs unless required by the arbitrator.

Added by Acts 2013, 83rd Leg., R.S., Ch. 218 (H.B. 33), Sec. 2, eff. September 1, 2013.

Sec. 247.093. EX PARTE CONTACTS PROHIBITED. (a) Except as provided by Subsection (b), the department and the facility may not communicate with an arbitrator other than at an oral hearing unless the parties and the arbitrator agree otherwise.

(b) Any oral or written communication, other than a communication authorized under Subsection (a), from the parties to an arbitrator shall be directed to the association that is conducting the arbitration or, if there is no association conducting the arbitration, to the State Office of Administrative Hearings for transmittal to the arbitrator.

Added by Acts 2013, 83rd Leg., R.S., Ch. 218 (H.B. 33), Sec. 2, eff. September 1, 2013.

Sec. 247.094. ORDER. (a) The arbitrator may enter any order that may be entered by the department, executive commissioner, commissioner, or court under this chapter in relation to a dispute described by Section 247.081.

(b) The arbitrator shall enter the order not later than the 60th day after the last day of the arbitration.

(c) The arbitrator shall base the order on the facts established at arbitration, including stipulations of the parties, and on the law as properly applied to those facts.

(d) The order must:

(1) be in writing;

(2) be signed and dated by the arbitrator; and

(3) include a statement of the arbitrator's decision on the contested issues and the department's and facility's stipulations on uncontested issues.

(e) The arbitrator shall file a copy of the order with the department and shall notify the department and the facility in writing of the decision.

Added by Acts 2013, 83rd Leg., R.S., Ch. 218 (H.B. 33), Sec. 2, eff. September 1, 2013.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0726, eff. April 2, 2015.

Sec. 247.095. EFFECT OF ORDER. An order of an arbitrator under this subchapter is final and binding on all parties. Except as provided by Section 247.097, there is no right to appeal.

Added by Acts 2013, 83rd Leg., R.S., Ch. 218 (H.B. 33), Sec. 2, eff. September 1, 2013.

Sec. 247.096. CLERICAL ERROR. For the purpose of correcting a clerical error, an arbitrator retains jurisdiction of the award until the 20th day after the date of the award.

Added by Acts 2013, 83rd Leg., R.S., Ch. 218 (H.B. 33), Sec. 2, eff. September 1, 2013.

Sec. 247.097. COURT VACATING ORDER. (a) On a finding described by Subsection (b), a court shall:

(1) on application of a facility, vacate an arbitrator's order with respect to an arbitration conducted at the election of the department; or

(2) on application of the department, vacate an arbitrator's order with respect to an arbitration conducted at the election of a facility.

(b) A court shall vacate an arbitrator's order under Subsection (a) only on a finding that:

(1) the order was procured by corruption, fraud, or misrepresentation;

(2) the decision of the arbitrator was arbitrary or capricious and against the weight of the evidence; or

(3) the order exceeded the jurisdiction of the arbitrator under Section 247.094(a).

(c) If the order is vacated, the dispute shall be remanded to the department for another arbitration proceeding.

(d) A suit to vacate an arbitrator's order must be filed not later than the 30th day after:

(1) the date of the award; or

(2) the date the facility or department knew or should have known of a basis for suit under this section, but in no event later than the first anniversary of the date of the order.

(e) Venue for a suit to vacate an arbitrator's order is in the county in which the arbitration was conducted.

Added by Acts 2013, 83rd Leg., R.S., Ch. 218 (H.B. 33), Sec. 2, eff. September 1, 2013.

Sec. 247.098. ENFORCEMENT OF CERTAIN ARBITRATION ORDERS FOR CIVIL PENALTIES. (a) This section applies only to a suit for the assessment of a civil penalty under Section 247.045 in which binding arbitration has been elected under this subchapter as an alternative to the judicial proceeding.

(b) On application of a party to the suit, the district court in which the underlying suit has been filed shall enter a judgment in accordance with the arbitrator's order unless, within the time limit prescribed by Section 247.097(d)(2), a motion is made to the court to vacate the arbitrator's order in accordance with Section 247.097.

(c) A judgment filed under Subsection (b) is enforceable in the same manner as any other judgment of the court. The court may award costs for an application made under Subsection (b) and for any proceedings held after the application is made.

(d) Subsection (b) does not affect the right of a party, in accordance with Section 247.097 and within the time limit prescribed by Section 247.097(d)(2), if applicable, to make a motion to the court or initiate a proceeding in court as provided by law to vacate the arbitrator's order or to vacate a judgment of the court entered in accordance with the arbitrator's order.

Added by Acts 2013, 83rd Leg., R.S., Ch. 218 (H.B. 33), Sec. 2, eff. September 1, 2013.